UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

| The Secretary, United States |) | | |
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| Department of Housing and Urban |) | | |
| Development, on behalf of |) | | |
| Kendra Bland and her minor children, |) | | |
| Nicholas, Gabriella, and Anthony Bland, |) | | |
| Charging Party, |) | HUDALJ No. | |
| vs. |) | FHEO Case No. 05-04-05 | 93-8 |
| Gerald J. Powers II (AKA Joe Powers), |) | | |
| Respondent. |)) | | |

CHARGE OF DISCRIMINATION

I. <u>JURISDICTION</u>

On or about March 25, 2004, Kendra Bland ("Complainant"), an aggrieved person, timely filed a verified complaint with the U.S. Department of Housing and Urban Development ("HUD"), alleging that Respondent, Gerald J. Powers II (AKA Joe Powers) ("Respondent"), discriminated against her and her minor children on the basis of familial status in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the "Act").

The Act authorizes the issuance of a Charge of Discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has redelegated to the Regional Counsel (67 Fed.Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Director of HUD's Office of Fair Housing and Equal Opportunity for the Midwest HUB, Region V, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on familial status, and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondent Gerald J. Powers II (AKA Joe Powers) is charged with discriminating against Complainant Kendra Bland and her minor children, Nicholas, Gabriella and Anthony Bland, aggrieved parties as defined by 42 U.S.C. § 3602 (i) of the Act, on the basis of familial status in violation of 42 U.S.C. § 3604(a) and (c) of the Act as follows:

- 1. It is unlawful to refuse to negotiate for the sale or rental of a dwelling, or to make unavailable or deny a dwelling, to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.
- 2. It is unlawful to make, or cause to be made, any statement with respect to the rental of a dwelling that indicates any preference, limitation or discrimination based on familial status or an intention to make any such preference, limitation, or discrimination on the basis of familial status. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.
- 3. At the time of the alleged incident of discrimination, Complainant was the mother of three minor children, one girl and two boys, ages four, six and nine years old.
- 4. According to the City of Milwaukee property tax records, Respondent was the owner of the duplex located at 1682 and 1684 North Cass Street, Milwaukee, Wisconsin ("subject property") at all times relevant to this Charge of Discrimination. The 1682 North Cass Street two-bedroom unit ("subject unit") is located on the lower level.
- 5. In addition to the subject property, Respondent also owns two additional duplexes located at 3066 and 3066-A North Newhall Street, Milwaukee, Wisconsin and 4506 and 4508 North Marlborough, Sherwood, Wisconsin.
- 6. Upon information and belief, Respondent Gerald J. Powers II also goes by the name of Joe Powers.
- 7. On or about September 2, 2003, Complainant had viewed and applied for the subject unit when it became available for rent.
- 8. On that date, Complainant had an appointment to view the subject unit with Millie Powers, Respondent's mother. Millie Powers showed Complainant the subject unit and provided Complainant with an application. Complainant completed the application and at that time, Respondent's mother informed Complainant that she would provide the application to her son, who owned the property.
- 9. After Complainant applied for the subject unit, she did not receive a response from either Respondent or his mother regarding Complainant's application. As a result, Complainant did not pursue renting the unit because she believed it had been rented.

- 10. On or about September 15, 2003, Eric Oberling and Ann Misiewicz ("Oberling and Misiewicz") moved into the subject unit and signed a one-year lease through August 30, 2004.
- 11. In or around February 2004, prior to the expiration of their lease, Oberling and Misiewicz decided to move and sublease their unit.
- 12. Upon information and belief, Respondent instructed Oberling and Misiewicz that they were responsible for finding a sublessor, conditioned on his approval of the tenant.
- 13. On February 8, 2004, Oberling and Misiewicz placed an advertisement for rental in the *Milwaukee Journal Sentinel*. The advertisement read as follows: "CASS N. 1682: off Brady, nice 2BR, porch, yard, W/D, parking, basement \$800 Avail Now 708-4188."
- 14. On or about February 8, 2004, Complainant telephoned (414) 708-4188 and spoke with an unidentified man. Complainant indicated that she was interested in a two-bedroom unit. The man informed Complainant that the unit was available. An appointment to view the unit was scheduled for later that afternoon.
- 15. That afternoon, Complainant, accompanied by her mother, arrived for the scheduled appointment and met with Oberling and Misiewicz.
- 16. Once Complainant viewed the subject unit and indicated her interest in obtaining an application, Oberling and Misiewicz informed Complainant that she would have to contact the owner for an application.
- 17. At that time, Eric Oberling, using his cell phone, telephoned Respondent and informed Respondent that he had someone at the unit who was interested in obtaining an application. He then handed Complainant the phone.
- 18. Complainant informed Respondent that she had just viewed the unit and was interested in obtaining an application. In the course of the conversation, Respondent asked Complainant her income. Complainant replied that she received child support for her three children and also attended college and received financial aid.
- 19. In response, Respondent said "that is going to be a problem." Complainant asked why it would be a problem. Respondent informed Complainant that "the unit is not suitable for children" and that "there is not enough room." Complainant told Respondent that her children were very young and that her sons would share one bedroom and that she would share the other bedroom with her daughter.
- 20. Complainant continued by stating that the unit was near her children's school and play area, their church and near shopping. She informed Respondent that she could not afford a three-bedroom apartment in that area. In response, Respondent told Complainant that he has had problems with kids in the unit in the past and that it was "not going to work." Before ending

- the call, Respondent asked Complainant for her name and phone number just in case he could not rent the unit.
- 21. On or about February 9, 2004, Complainant contacted the Metropolitan Milwaukee Fair Housing Council ("MMFHC"). MMFHC is a non-profit fair housing organization in Wisconsin that promotes fair housing practices. As part of its fair housing enforcement efforts, MMFHC conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices.
- 22. In response to Complainant's allegations, MMFHC conducted two fair housing tests of the subject property.
- 23. On or about February 9, 2004, Tester #1, posing as a single mother with two sons, telephoned (414) 708-4188 and left a message. Later that evening, Tester #1 received a call from a man who identified himself as "Eric," Eric Oberling. Tester #1 indicated that she was interested in the two-bedroom unit. An appointment to view the unit was scheduled for February 11, 2004.
- 24. On February 11, 2004, Tester #1 arrived for the scheduled appointment and met with Oberling and Misiewicz. During the course of the visit, Oberling and Misiewicz informed Tester #1 that if she was interested in the unit, she would have to telephone either the landlord "Joe Powers," (Respondent Gerald J. Powers II) or his mother, "Millie," for information on how to obtain an application. Oberling and Misiewicz provided Tester #1 with Respondent's phone number.
- 25. On February 11, 2004, Tester #1 telephoned Respondent at (414) 331-6276 and spoke with a man who identified himself as "Joe," Respondent Gerald J. Powers II. Tester #1 informed Respondent that she viewed the subject unit that morning and was interested in obtaining an application.
- 26. In the course of the conversation, Tester #1 informed Respondent that the unit would be for herself and her two sons. Respondent replied by asking the ages of her sons. Tester #1 replied five and seven years old. At that time, Respondent informed Tester #1 that previous children, about that age, had caused damage to the walls of one of his units. Respondent continued by stating that "people promised that their kids were good and won't cause any damage, but that parents can't keep an eye on their kids twenty-four hours a day" and that he preferred "to avoid renting to someone with young children."
- 27. On February 13, 2004, Tester #2, posing as a single mother with two daughters, telephoned (414) 708-4188 and spoke with a man who identified himself as "Eric," Eric Oberling. Tester #2 indicated that she was interested in a two-bedroom unit and asked to make an appointment to view the unit. An appointment was scheduled later that day.
- 28. On February 13, 2004, Tester #2 arrived for the scheduled appointment and met Oberling and Misiewicz. During the course of the visit, Oberling and Misiewicz informed Tester #2 that if she was interested in the unit, she would have to contact the owner's mother, "Millie."

- Oberling and Misiewicz provided Tester #2 with Respondent's and his mother's phone numbers.
- 29. On February 13, 2004, Tester #2 telephoned (414) 331-6276 and spoke with a man who identified himself as "Joe," Respondent Gerald J. Powers II. Tester #2 indicated that she viewed the subject unit and thought it was a nice unit for herself and her two daughters.
- 30. After Respondent informed Tester #2 of the application process, he asked Tester #2 the ages of her two daughters. Tester #2 replied that her daughters were six and three years old. Respondent remarked, "we've been getting a lot of people with kids calling about this property" and added that he had problems in the past with children but that "girls are a lot better than boys."
- 31. As a result of Respondent's discriminatory conduct, Complainant and her children, suffered damages, including economic loss, inconvenience, emotional distress and the loss of an important housing opportunity.
- 32. As a result of Respondent's discriminatory conduct, Nicholas, Gabriella and Anthony Bland suffered because they saw their mother distraught and crying. While attending to them, their mother was preoccupied with the loss of the apartment. Finally, the children were separated from friends and family in the neighborhood, which was far from their new apartment and their mother had no car.
- 33. As a result of Respondent's discriminatory conduct, Complainant suffered emotionally because she was unsure of whether she would find an affordable and large enough place to live in her community. Complainant, who was studying for mid-terms at that time, experienced an increase in stress and anxiety levels. In addition to the added stress, Complainant was also discouraged in her subsequent housing search because she believed another housing provider would refuse to rent to her because of her children.
- 34. At all times relevant to this Charge of Discrimination, Complainant did not own a vehicle. As a result, the location of the subject unit was extremely important for Complainant and her children because it was located in their community, near friends and family, and was within walking distance to their church, play areas, bank, shopping center and the children's school.
- 35. At all times relevant to this Charge of Discrimination, Complainant attended Mount Mary College in Milwaukee, Wisconsin, requiring her to drive to class. The subject unit was closer to Complainant's mother's home, which was very important to Complainant, because she borrowed her mother's car for her commute to school.
- 36. As a result of Respondent's discriminatory conduct, Complainant incurred economic loss, including paying an amount which exceeded her budget for rent at the apartment that she finally rented, moving expenses, storage fees and an increase in transportation cost. Because of Respondent's discriminatory conduct, Complainant's subsequent housing situation negatively impacted Complainant and her family.
- 37. By denying Complainant and her family the opportunity to rent the subject unit based on

familial status, Respondent committed unlawful discrimination in violation of 42 U.S.C. § 3604(a) of the Fair Housing Act.

38. By making statements to Complainant that indicated a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination, Respondent committed unlawful discrimination in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.

III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel for the Midwest and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges e Respondent with engaging in discriminatory housing practices in violation of §§ 3604(a) and (c) of the Act and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § § 3601 et seq.;
- 2. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating on the basis of familial status against any person in any aspect of the purchase or rental of a dwelling;
- 3. Awards such damages as will fully compensate Complainant and her children, aggrieved persons, for their emotional distress, economic loss, inconvenience and loss of housing opportunity caused by Respondent's discriminatory conduct.
- 4. Awards a civil penalty of \$11,000 against Respondent pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

| Respectfully submitted, | | | |
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